



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 10468481

DATE: SEPT. 3, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for an Advanced Degree Professional

The Petitioner, a software and hardware development business, seeks to employ the Beneficiary as a software engineer. It requests classification of the Beneficiary as an advanced degree professional under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based “EB-2” immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition on the ground that the record did not establish that the Beneficiary had the skills required in section H.14 of the labor certification to qualify for the job offered.

On appeal the Petitioner submits a brief<sup>1</sup> asserting that the Director misapplied the law and that previously submitted evidence establishes that the Beneficiary has the skills required by section H.14 of the labor certification.

Upon de novo review, we will withdraw the Director’s decision and remand the case for further consideration of whether the Beneficiary has the requisite skills under the terms of the labor certification to qualify for the proffered position.

## **I. LAW**

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification (ETA Form 9089) from the U.S. Department of Labor (DOL). See section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and

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<sup>1</sup> The brief was submitted by the Petitioner’s former counsel along with a copy of the Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, that was originally filed with the petition. This Form G-28, however, did not comport with the regulatory requirement of 8 C.F.R. § 292.4(a), which states that “a new form must be filed with an appeal filed with the Administrative Appeals Office of USCIS.” On March 27, 2020, we sent a “Notice of Self-Representation” to the Petitioner and former counsel advising that an appeal filed by a representative must contain a new, properly executed Form G-28, and that because no such form was submitted with this appeal we considered the Petitioner to be self-represented. No further communication has been received from the Petitioner or former counsel.

working conditions of domestic workers similarly employed. See section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition (Form I-140) with U.S. Citizenship and Immigration Services (USCIS). See section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. See section 245 of the Act, 8 U.S.C. § 1255.

## II. ANALYSIS

To qualify for classification as an advanced degree professional, the Beneficiary must have at least a U.S. master's or foreign equivalent degree, or a U.S. baccalaureate or foreign equivalent degree plus five years of progressive post-baccalaureate experience in the specialty. See 8 C.F.R. § 204.5(k)(3)(i). The Beneficiary must also meet the specific educational, training, experience, and other requirements of the labor certification. See 8 C.F.R. § 204.5(a)(2). All requirements must be met by the petition's priority date,<sup>2</sup> which in this case is June 13, 2019. See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

The education, training, experience, and other requirements for the proffered position are set forth in section H of the ETA Form 9089. In this case section H has the following relevant entries with respect to the proffered position of software engineer:

- |      |  |   |
|------|--|---|
| 4.   | Education: Minimum level required:                                     | Master's degree                             |
| 4-B. | Major Field of Study:  | Computer Science /<br>Computational Science |
| 5.   | Is training required in the job opportunity?                           | No  |
| 6.   | Is experience in the job offered required?                             | No  |
| 7.   | Is an alternate field of study acceptable?                             | No  |
| 8.   | Is an alternate combination of education<br>and experience acceptable? | No  |
| 9.   | Is a foreign educational equivalent acceptable?                        | No  |
| 10.  | Is experience in an alternate occupation acceptable?                   | No  |
| 14.  | Specific skills or other requirements:                                 |   |

Proficiency in C, C++/STL, Python, Matlab, Java Programming;  
Strong Understanding of Computing Algorithms, Data Structures, and  
Numerical Simulation;  
Familiarity with Software Development Process;  
Strong Communication and Problem-Solving Skills.

Thus, the labor certification requires a U.S. master's degree in computer science or computational science. The record shows that the Beneficiary earned a master of science degree in computational science from the University of [REDACTED] on March 24, 2018. Therefore, the Beneficiary meets the minimum educational requirement of the labor certification.

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<sup>2</sup> The "priority date" of an I-140 petition is the date the underlying labor certification was filed with the DOL. See 8 C.F.R. § 204.5(d).

The labor certification does not require any training, or experience in the job offered, or experience in an alternate occupation. However, it does identify a series of “specific skills” in section H.14. The Petitioner did not submit any initial evidence that the Beneficiary met the specific skills requirements. In response to the Director’s request for evidence (RFE), however, the Petitioner submitted a photocopied letter from [ ] senior R&D engineer for [ ] an e-commerce company located in [ ] China, who stated that the Beneficiary worked as a full-time software engineer during a three-month summer internship from June to September 2017, and described the Beneficiary’s job duties and technical capabilities. [ ] did not indicate whether he was the Beneficiary’s supervisor or had any other working relationship to the Beneficiary during his internship. As described in [ ]’s letter, the Beneficiary’s experience with [ ] appears to cover all of the specific skills requirements in section H.14 of the labor certification.

In denying the petition the Director pointed out that [ ] was not listed in the labor certification as a current or former employer of the Beneficiary, and stated that “[o]nly information from employers listed on the [labor certification] are considered when adjudicating the beneficiary’s required experience and skills.” Accordingly, the Director did not consider the letter from [ ] and concluded that the Petitioner did not establish that the Beneficiary met the “specific skills” requirement of the labor certification.

On appeal the Petitioner asserts that there is no legal basis for the Director not to consider the letter from [ ] just because that company was not listed in the labor certification as a former employer of the Beneficiary.

The labor certification in this case states that no work experience is required to qualify for the job offered. The specific skills required in section H.14 could conceivably have been acquired in an educational program rather than through work experience. The Petitioner claims that the Beneficiary meets the specific skills requirement based on his summer internship with [ ]. It is unclear from the record whether that experience was for credit and connected to the Beneficiary’s education, or whether the internship was work experience for pay that should have been identified in section K of the labor certification (Alien Work Experience).<sup>3</sup> Section K instructs the Petitioner to list all jobs the Beneficiary has held in the past three years and provide job details including “skills” for each. Omitting the internship from the labor certification, therefore, may lessen the credibility of [ ]’s letter as evidence that the Beneficiary meets the specific skills requirement of the labor certification. However, the omission does not strictly preclude the consideration of that letter by USCIS as a matter of law or practice. See *Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976). In view of its lessened credibility due to the internship’s omission from the labor certification, though, the letter from [ ] must be supported by independent objective evidence to establish its credibility.

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<sup>3</sup> The letter from [ ] does not indicate whether the Beneficiary was compensated for his three months of work. The Beneficiary’s transcript from [ ] does not identify the summer internship at [ ] as part of his master’s degree program.

### III. CONCLUSION

In accord with the foregoing analysis, we will remand this case for further consideration. The Director may request additional independent and objective evidence from the Petitioner to determine whether the Beneficiary meets the specific skills requirement of the labor certification.

ORDER:      The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.